

RUTH L. SCHWOERER

IBLA 85-361 Decided May 28, 1986

Appeal from a decision of the Oregon State Office, Bureau of Land Management, denying request for approval of partial assignment of noncompetitive oil and gas lease. OR-22522.

Affirmed.

1. Oil and Gas Leases: Assignments or Transfers -- Oil and Gas Leases:
Termination

A decision rejecting a request by an assignee for approval of a partial assignment of an oil and gas lease will be affirmed where the lease had terminated automatically by operation of law for failure to pay the annual rental on or before the lease anniversary date and the assignee had not tendered the rental required for the lands described in the partial assignment prior to the anniversary date.

APPEARANCES: Ruth L. Schwoerer, pro se.

OPINION BY ADMINISTRATIVE JUDGE GRANT

Ruth L. Schwoerer has appealed from a decision of the Oregon State Office, Bureau of Land Management (BLM), dated January 15, 1985, denying her request for approval of a partial assignment of noncompetitive oil and gas lease OR-22522. The basis of the decision was the fact the lease terminated November 1, 1984, for lack of payment of the annual rental for the lease.

Effective November 1, 1981, BLM issued noncompetitive oil and gas lease OR-22522 to Paul R. Colacecchi for 2,560 acres of land situated in Jefferson County, Oregon, pursuant to section 17 of the Mineral Leasing Act, as amended, 30 U.S.C. § 226 (1982). The lease was subsequently assigned to Leland Capital Corporation (Leland Capital) effective October 1, 1983. After portions of the leased lands were segregated by a series of partial assignments, approved effective December 1, 1983, and January 1, 1984, the base lease held by Leland Capital was reduced to 960 acres of land. The assignment to appellant

filed for approval thereafter in January 1984 was still awaiting adjudication on the next lease anniversary date, November 1, 1984.

There is no evidence in the record that any rental payment was tendered for lease OR-22522 for the year commencing November 1, 1984. Accordingly, by notice dated January 15, 1985, BLM informed the lessee, Leland Capital, that oil and gas lease OR-22522 had terminated on November 1, 1984, for failure to pay the annual rental on or before the anniversary date of the lease.

A copy of the assignment was not retained in the BLM case file when the unapproved assignment was returned to appellant with the decision under appeal. It appears from the accounting advice reflecting receipt by BLM of the filing fee that the assignment was filed on January 18, 1984. Appellant disclosed in her statement of reasons for appeal that the assignment included 80 acres out of the 2,560 acres originally embraced in the lease.

In her statement of reasons for appeal, appellant contends she purchased the oil and gas lease from Leland Capital in July 1983 and would have paid the annual rental due on November 1, 1984, but for the fact that she was incapacitated with a recurring illness at that time and never received a notice of rental due.

[1] Section 31(b) of the Mineral Leasing Act, as amended, 30 U.S.C. § 188(b) (1982), provides that an oil and gas lease will "automatically terminate by operation of law" where the lessee fails to pay the annual rental on or before the lease anniversary date and there is no well capable of producing oil or gas in paying quantities. Accordingly, in the absence of evidence that the rental was tendered by the anniversary date, oil and gas lease OR-22522 terminated on November 1, 1984, for failure to pay the annual rental due on or before that date. Dena F. Collins, 86 IBLA 32 (1985).

An assignment of 100 percent of the record title to a portion of the leased lands segregates the assigned portion and the retained portion into separate leases. 43 CFR 3106.7-5. This Board has held that a partial assignment of record title to certain acreage in a Federal oil and gas lease filed by a qualified assignee prior to the lease anniversary date may be approved after the anniversary date where the annual rental for the segregated acreage in the assignment was tendered prior to the anniversary date. Ladd Petroleum Corp., 70 IBLA 313 (1983). However, in light of appellant's failure to tender the rental for the lands embraced in her assignment prior to the lease anniversary date, appellant cannot avail herself of this holding. 1/

1/ While the potential assignee may pay the annual rental, BLM is under no obligation to provide a courtesy notice of the rental due, prior to the lease anniversary date, to the assignee. Otto C. Svancara, 87 IBLA 319, 321-22 (1985). Indeed, failure to provide such a notice to the lessee does not justify a late payment or avert the statutory consequences of the failure to pay timely. Harry C. Peterson, 75 IBLA 195 (1983).

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

C. Randall Grant, Jr.
Administrative Judge

We concur:

John H. Kelly
Administrative Judge

Bruce R Harris
Administrative Judge

